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March 2, 2010

VIA ELECTRONIC MAIL& ABC/LMI
David Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: Washington Utilities and Transportation Commission v. Puget Sound Energy
Docket Nos. UE-090704 and UG-090705

Dear Mr. Danner:

Enclosed please find the original and twenty-one copies of Public Counsel's Reply Brief for filing in the above-entitled dockets.

Sincerely,

Simon J. ffitch
Senior Assistant Attorney General
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SJf:cjw
Enclosures

cc: Service List (E-mail & Federal Express Overnight)
Judge Dennis Moss (E-mail only)

Docket Nos. UE-090704 & UG-090705
PSE GRC 2009

I hereby certify that a true and correct copy of the Reply Brief of Public Counsel was sent to each of the parties of record shown below in sealed envelopes, via: Federal Express Overnight, and electronic mail on March 2, 2010.

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Dated: March 2, 2010.

Carol Williams
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Legal Secretary

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMSSION, Complainant, v. Puget Sound Energy, Inc., Respondent.	DOCKET NO. UE-090704 and DOCKET NO. UG-090705 (consolidated)

REPLY BRIEF OF PUBLIC COUNSEL

MARCH 2, 2010

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I. INTRODUCTION

1. For the most part, Public Counsel's Opening Brief has addressed the issues raised by PSE and other parties in their initial briefs. This Reply Brief highlights a few issues where a response is appropriate.

2. PSE's Initial Brief repeats earlier assertions that the Company has taken serious steps towards cost-containment, including salary freezes for officers and travel restrictions.[1] Without disputing that these actions have occurred, they should be kept in perspective. At the same time it emphasizes these efforts, PSE advocates other positions in this case that dwarf any such savings in terms of countervailing increased rate impact. The Company seeks significant increases in its common equity ratio and return on equity, employs an aggressive interpretation of the proforma adjustment rule,[2] proposes a new Conservation Phase-In adjustment, defends its continued dramatic under-projection of off-system sales, requests recovery of large Mint Farm deferred costs for a time period when PSE has no need of the power and customers do not benefit, and supports a pension cost accounting methodology that clearly favors shareholders. On smaller dollar issues as well, such as D&O liability insurance, SERP, and private aircraft costs, PSE actively opposes reasonable proposals to fairly allocate cost recovery between ratepayers and shareholders. PSE's positions in this case call into question whether it has truly sought to limit its rate requests to the minimum needed during this period of serious economic challenge.

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[1] Initial Brief of Puget Sound Energy, Inc., (PSE Brief), ¶¶ 9-10.

[2] It is noteworthy that the PSE discussion of Commission requirements for pro forma adjustments makes no mention of the Commission's recent Avista decision extensively reviewing the issue. *WUTC v. Avista Corp.*, Docket Nos. UE-090134, UG -090135, Order 10, ¶¶ 40-52.

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II. COST OF CAPITAL

A. Capital Structure.

1. The Commission may properly adopt a hypothetical capital structure.

3. PSE suggests that the capital structures proposed by Staff and Public Counsel are suspect because they are "hypothetical."[3] In fact, PSE also proposes a hypothetical capital structure. The Commission has no practice of adopting actual capital structures for ratemaking purposes regardless of the circumstances. Obviously this would make the Commission's cost of capital decision merely a ministerial act, subject entirely to a company's discretion, whether it chose to operate at dangerously low 20 percent equity ratio or an unnecessarily high and expensive 60 percent level. Instead, the Commission seeks to determine the most reasonable capital structure, including a common equity ratio, the strikes a fair balance between the interests of safety and economy.[4] The Commission's adoption in 2002 of an equity tracking mechanism for PSE reflects this principle.[5]

2. Public Counsel offers ample justification for its common equity ratio recommendation.

4. PSE's brief argues that "Public Counsel fails to provide any justification for its proposed common equity ratio of 43 percent" other than following prior Public Counsel recommendations and referencing PSE's average historic levels.[6] Contrary to this assertion, the record provides extensive evidence to support Public Counsel's recommendation: (1) PSE has successfully capitalized its operations with a historical average of 42 percent common equity ratio, *while*

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[3] PSE Brief, ¶ 51.
[4] *WUTC v. Puget Sound Energy*, Docket Nos. UE-040641/UG-040640, Order 06, ¶ 27.
[5] *WUTC v. Puget Sound Energy*, Docket Nos. UE-011570/UG-011571, Ninth Supplemental Order, Appendix A, pp. 6-7 (Equity Growth Tracker)(The Commission allowed PSE a hypothetical equity ratio above its unsafely low actual equity ratio, while requiring it to gradually increase its actual equity ratio to a more healthy level over time).
[6] PSE Brief, ¶ 50.

maintaining a BBB rating;[7] (2) the average common equity ratio for all market-traded electric utilities is 44 percent;[8] (3) the average common equity ratio for BBB rated electric utilities (PSE's rating) is 40 percent;[9] (4) PSE has not proven any increase in operational risk since the last GRC that would warrant their proposed increased equity ratio; (5) PSE has no concerns about funding its capital budget plans;[10] and (6) PSE's cost of capital requests in this case appear to be significantly influenced by the new cash-flow requirements that have resulted from the recent sale of the Company.[11]

B. Cost of Equity (ROE).

1. ROE methodology issues: "sustainable growth rate" and comparable company ROEs.

5. PSE argues the Staff and Public Counsel "rely in error" on the sustainable growth method to determine the growth component of DCF. This criticism is not well founded. First, the "sustainable growth" rate is only one of several growth rates relied on by Mr. Hill.[12] Second, the method does not contain a "logical contradiction" as alleged in PSE's brief. The sustainable growth rate does not use one authorized ROE to determine another, as the brief implies, it uses an earned return on equity. What is being determined is a market-based cost of equity capital, which can be higher or lower than the authorized level. The methodology uses these earned accounting returns along with the amount of earnings to be retained by the firm to provide one estimate of long-term growth.[13]

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[7] Exh. No. SGH-1HCT, p. 8.
[8] *Id.*, p. 6.
[9] *Id.*
[10] Markell, TR. 305:7-307:3; Exh. No. EMM-11C, response a.
[11] Exh. No. SGH-1HCT, pp. 12-18.
[12] Exh. No. SGH-1HCT, p. 29, pp. 34-35.
[13] *See, e.g.,* Exh. No. SGH-1HCT, p. 31:21 ("earned return on equity").

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6. PSE's brief points to allowed ROEs from companies in Mr. Hill's "comparable group."[14] The ROEs are from a past time period (which is not stated[15]). There is no information about whether these were set by settlement, what company ownership structure applies, or other relevant factors. These are not a reliable indicator of the current cost of capital.

2. It is not appropriate to entirely disregard CAPM in the ROE calculation.

7. PSE's Brief recommends that the Commission "give no weight to CAPM results" in its cost of capital analysis in this case. In support of this new recommendation, the brief misrepresents the record by claiming that Mr. Hill "agree[s] that the CAPM is not an appropriate methodology in the current economic climate."[16] What Mr. Hill actually says is that CAPM should be used with caution and is less reliable than DCF, but that it still is a "useful description of the capital markets."[17] He includes CAPM as part of his overall analysis, as do all the cost of capital witnesses.

8. This assertion by PSE is an interesting new development, given that the Company's own witness, Dr. Morin, did not himself make this recommendation in direct or rebuttal testimony. In his direct, Dr. Morin included the CAPM method in his analysis and stated that "the CAPM is a fundamental paradigm of finance."[18] While Dr. Morin did state in both direct and rebuttal testimony that "less weight" should be accorded CAPM under present circumstances, he at no point recommended completely discarding the results.[19] He performed both CAPM and

[14] PSE Brief, ¶ 58.
[15] In support of Dr. Morin's recommendation, PSE cites allowed ROEs for 2008, rather than 2009. PSE Brief, ¶ 57.
[16] PSE Brief, ¶ 56, n.114.
[17] Exh. No. SGH-1HCT, p. 42.
[18] Exh. No. RAM 1T, p. 23.
[19] Exh. No. RAM-19T, p. 55 (citing discussion in Direct Testimony).

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Empirical CAPM analyses in rebuttal and included them in his results and the calculation of his range.[20]

9. One rationale provided by PSE in the brief for completely discounting CAPM "under present circumstances" is that "spreads between costs of capital for private companies and government interest rates have diverged substantially following the Federal Reserve's expansionary policies designed to jump start the stalled economy."[21] This statement, also included in Dr. Morin's rebuttal, is simply no longer accurate. As shown Chart II in Mr. Hill's testimony, the divergence referred to has receded and "corporate bond yields have declined below pre-crisis levels."[22]

3. Dr. Morin's changed approach to his Historical Risk Premium analysis is still not adequately explained.

10. PSE fails to adequately explain Dr. Morin's methodological changes on his Historical Risk Premium Analysis, simply restating his previously offered rationale. To explain his change from the Moody's Electric Index to Standard & Poor's, PSE states that Moody's publication was discontinued in 2002. The brief does not explain why Dr. Morin was nevertheless comfortable using Moody's as late as 2007, five years after publication ceased. The Company also asserts that the increase of 40 basis points that results from the changed approach is not material. Public Counsel disagrees.[23]

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[20] Exh. No. RAM 19T, p. 56. These CAPM and ECAPM results, as corrected, were again provided in PSE's response to Bench Request No. 7.
[21] PSE Brief, ¶ 61. The rationales listed in the brief are essentially the same relied on Dr. Morin's testimony for assigning "less weight" to CAPM, while not eliminating if from the calculation.
[22] Exh. No. SGH-1HCT, pp. 24-25, Chart II – Financial Crisis: Bond Yield Changes.
[23] Exh. No. SGH-1HCT, p. 63.

11. Similarly, PSE defends Dr. Morin's newly adopted use of long-term utility bonds rather than long-term Treasury bonds, a departure from prior practice, by again pointing to divergence in bond yields. As noted above, that divergence no longer exists.[24]

III. MINT FARM PRUDENCE AND COST DEFERRAL

A. The Quantitative Analysis Confirms That Mint Farm Is The Most Expensive Choice For Ratepayers.

12. PSE and Staff have responded throughout the case to Public Counsel's prudence concerns with essentially two arguments, repeated again in the initial briefs: (1) the "levelized cost" analysis means Mint Farm is the most economically beneficial resource choice, notwithstanding other quantitative evidence strongly to the contrary; and (2) Public Counsel does not adequately take note of the qualitative factors that favored the Mint Farm acquisition.

13. Public Counsel's Opening Brief explains how PSE and Staff have improperly elevated "levelized cost" to be the determinative factor in the economic analysis, reducing other economic measures to irrelevance. This is a misapplication of the analysis. "Levelized cost" isolates resource cost on a stand-alone basis, and does provide one basis for comparing resources, most usefully when the resources are very similar in nature. Generation facilities, however, are not operated or paid for in isolation. Thus, the prudent utility also reviews the portfolio benefit and the benefit ratio metrics. As PSE's own power cost witness, Mr. Garratt, stated:

> In analyzing portfolio cost impact, PSE prefers proposals and combinations of proposals *that result in the lowest impact on PSE's revenue requirement and rates when included in PSE's existing generation resource portfolio.*[25]

In this case, there is "no contest" between Mint Farm and the other alternate PPA, in the final analysis, in terms of revenue and rate impact.

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[24] *Id.*, pp. 24-25, Chart II.
[25] Exh. No. RG-53HCT, p. 13 (emphasis added).

B. Mint Farm Does Not Outrank The Alternative PPA In The Qualitative Analysis.

14. PSE again mischaracterizes Public Counsel's argument by implying that Public Counsel discounts the importance of qualitative factors in resource acquisition.[26] Public Counsel agrees with the Company that resource decisions should reflect both quantitative and qualitative results. Quantitative "economic" factors have key significance however. Surely PSE does not mean to suggest that "money is no object" if the qualitative factors are favorable. Clearly, the economics are always a critical driving force in any resource decision. Qualitative factors, however, have particular significance when the quantitative assessment indicates two or more resources have similar ratings or rankings, which is not the case here.

15. Indeed, when the qualitative factors for Mint Farm are examined, there is little or no difference between Mint Farm and the other resources on "key risks" examined. Mint Farm rates the same as the alternative PPA on transmission risk, price risk, development and siting risk, and rates less favorably than the alternative PPA on execution risk.[27] PSE has to date not effectively explained why, given the qualitative parity, it was reasonable to acquire the far more expensive resource.

16. In fact, there are qualitative factors that are not neutral but negative. One significant issue, identified by Staff, is flood protection. As Staff points out in testimony:

> Although the Columbia River is located within ½ mile of the site and the topology from the river to the Mint Farm site is flat, the Company failed to assess the current condition of the dike system that protects the plant from normal flood events.[28]

This is a surprising omission by the Company, potentially exposing PSE and its customers to

[26] PSE Brief, ¶ 17.
[27] Exh. No. RG-3C, p. 110.
[28] Exh. No. DN-1HCT, p. 20.

significant cost in the event of flood damage or interruption of operation. Staff, interestingly, does not treat this glaring omission as a reflection on the prudence of the acquisition. It simply asks that a hazard assessment and contingency plan be required.[29]

17. Public Counsel has discussed other qualitative issues in Mr. Norwood's testimony which fall into the negative column such as plant condition, transmission, gas transportation, and back-up fuel capability. PSE responds that it has addressed plant condition, gas transportation and distribution needs,[30] but appears to acknowledge that transmission issues remain, although PSE terms them "minor."[31]

18. There is simply no basis in the record to view Mint Farm as a "slam dunk" in terms of quantitative factors.

C. Mint Farm Is Not Needed At The Present Time and Is Excessively Costly Over The Long Term.

1. Public Counsel's economic arguments focus on the full life span of Mint Farm.

19. PSE and Staff argue that Public Counsel improperly focuses on the first two years of Mint Farm and ignores the benefits projected over the life of the plant.[32] This mischaracterizes Public Counsel's position. It is certainly true that Mint Farm is more costly than market purchases at the present time[33] and is not needed to meet PSE's capacity through 2011.[34] Public Counsel's prudence recommendation, however, is based on PSE's economic analyses of the benefits of Mint Farm and the alternative PPA *over the entire operating lives of these facilities.*[35]

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[29] *Id.*, pp. 20-21.
[30] PSE Brief, ¶ 20.
[31] PSE Brief, ¶ 21.
[32] PSE Brief, ¶ 16; Staff Brief, ¶ 182.
[33] Exh. No. SN-1HCT, p. 29:9-20.
[34] Staff Brief, ¶ 176; Exh. No. SN-1HCT, p. 9:3-6.
[35] Exh. No. SN-1HCT, pp. 9:12 to 12:18.

20. PSE and Staff also argue that Mr. Norwood's "admission" in testimony that Mint Farm may benefit customers in the long-term undercuts his prudence recommendation. The fact that Mint Farm has some level of benefit, however, does not mean that Mint Farm was the prudent choice no matter what alternatives were available. PSE's own analyses show that the alternative PPA was more beneficial to customers over the life of Mint Farm by approximately $50 million.[36] The fact that Mint Farm is not completely devoid of benefits to customers hardly justifies its selection over the resource that saves customers an additional $50 million. The issue is not whether Mint Farm is forecasted to provide *any* benefits to customers, but rather whether Mint Farm provided the *most* benefits to customers.

21. Staff asserts that Public Counsel has ignored the fact that Mint Farm provides cheaper variable energy costs since PSE would have been exposed to market pricing if it had selected the the alternative PPA.[37] This argument ignores the fact that PSE evaluated the alternative PPA and Mint Farm over a wide range of scenarios that considered variation in market and gas prices, and that in every scenario evaluated, the alternative PPA provided much higher benefits.[38]

22. Staff's argument that the alternative PPA was not suitable to meet PSE's resource needs in 2011 ignores the fact that PSE does not have a capacity need in 2011.[39] The energy needs in 2011, and any short-term capacity need, could have been supplied from short-term market purchases.[40] In effect, this is what PSE assumed in its economic analysis of the alternative PPA.

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[36] Exh. No. SN-1HCT, p. 10:15-16, citing PSE data in Exh. No. SN-3HC, p. 2.
[37] Staff Brief, ¶ 183.
[38] Exh. No. RG-3HC, pp. 119-122.
[39] Staff Brief, ¶ 184.
[40] Exh. No. SN-1HCT, p. 29.

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It is simply wrong to assume that PSE had no other options to supply 2011 energy requirements if had not purchased Mint Farm.[41]

2. Public Counsel's position is not inconsistent with the PacifiCorp case.

23. Public Counsel's position with respect to prudence is not inconsistent with its position in the PacifiCorp case regarding the Chehalis Generating Plant, as suggested by Staff.[42] As an initial matter, that determination was the result of a settlement agreement which specifically provided that no precedent was being established.[43] Even absent this provision, the PacifiCorp case is not relevant here. By definition, every prudence decision is very closely tied to the individual facts of the particular resource acquisition including, the resource characteristics, the competing bids, the quality and results of the analysis of economic and other factors, and the company and board decision making process.

24. There are key distinctions between the two cases . Chehalis was identified as the lowest cost resource available, with extremely attractive pricing. In addition, it was determined that "the economics of the transaction just[ified] its acquisition prior to the need identified in the IRP."[44] Neither of these considerations is applicable in this case. The Chehalis plant acquisition

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[41] PSE argues that there is no provision in RCW 80.80.060 that requires a determination of the need or appropriateness of a power plant. PSE Brief, ¶ 24. However, both these elements were included in the statute at the time of the filing of the original Mint Farm accounting petition in Docket No. UE-082128 and the settlement which agreed that all cost recovery issues would be considered in this rate case. *In the Matter of the Petition of PSE For Determination of Emissions Compliance and Proposed Accounting Treatment For the Mint Farm Energy Center,* Docket No. UE-082128, Order 03 (April 17, 2009). The statute was amended to remove these terms, effective July 26, 2009. Chapter 147, Laws of 2009 (SB 5989). The Final Bill Report stated that the effect of the change was to simplify the UTC review of the emissions performance standard and that "[a]ll other issues, such as the need and appropriateness of the resource, will be determined in a subsequent rate case." Final Bill Report, SB 5989, Ch. 147, Laws 2009, p. 2 (not a statement of legislative intent). The Commission's rule, WAC 480-100-415(1), still contains the need and appropriateness language. Public Counsel believes the issue is still before the Commission.

[42] Staff Brief, ¶ 177.

[43] *WUTC v. PacifiCorp,* Docket No. UE-090205, Order 09, Settlement Stipulation, ¶ 34.

[44] *Id.*, Order 09, ¶ 50.

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was the least cost alternative even after considering the fact that the plant was purchased before it was needed for capacity purposes. That is not the case with Mint Farm.[45]

D. Mint Farm Does Not Meet The Definition Of Baseload Electric Generation.

1. The emissions permit does not address Mint Farm's capacity factor.

25. Prudence and deferral are separate issues. The issue on the deferral request is whether it is appropriate for customers to bear the costs of Mint Farm during the two year period since its acquisition. In support of classifying Mint Farm as "baseload electric generation," PSE's Brief states "[a]dditionally, Mint Farm's air discharge permit allows Mint Farm to operate 365 days per year."[46] Staff argues similarly that "t]here are no air quality permit restrictions on Mint Farm's ability to operate at or above a 60 percent annual capacity factor."[47] As a review of Mint Farms' Air Discharge Permit[48] shows, however, it is not possible to determine the maximum capacity factor of the plant from the permit itself. The permit establishes emissions limits in terms of pounds per hour, tons per year, or parts per million. Capacity factor is determined in kilowatt-hours, however. Public Counsel finds nothing in the permit addressing this operational requirement. Neither Staff nor PSE has pointed to any specific provision in the Mint Farm permit that verifies an intent to operate at or above a 60 percent capacity factor.

2. Recovery of deferred costs is not appropriate when there is no benefit to customers.

26. Staff supports PSE's request to defer Mint Farm's costs.[49] While addressing various details of the proposal, however, Staff does not discuss the underlying requirements for allowing

[45] Exh. No. SN-1HCT, p. 19:6-19
[46] PSE Brief, ¶ 12.
[47] Staff Brief, ¶ 173.
[48] Exh. No. JMH-3.
[49] Staff Brief, ¶ 140.

recovery of deferred costs. Deferred costs must meet "test year principles."[50] These include a determination that plant at issue must be "used and useful." As Mr. Nightingale discussed in his testimony:[51]

> The Commission has stated that the phrase "used and useful for service in this state" means "to benefit the ratepayers of Washington, either directly (*e.g.*, flow of power from a resource to customers) and/or indirectly (*e.g.*, reduction of cost to Washington customers through exchange contracts or other tangible or intangible benefits)."[52] The Commission also has stated that "the [c]ompany must demonstrate tangible and quantifiable benefits to Washington of resources in the system before we will include the resources in rates."[53]

Mint Farm provides no tangible benefits of the type described here to Washington customers during the deferral period.

IV. POWER COST ISSUES

A. Understated Purchase Levels Do Not Balance Out Understated Off-System Sales.

27. PSE attempts to rebuff concerns about its off-system sales (OSS) by claiming that Public Counsel ignores market purchases and is therefore being "one-sided."[54] In fact, Public Counsel addressed this specific issue during cross-examination of Mr. Mills at the hearing regarding his Table 6, which depicts projected market purchases and sales since 2004. PSE only makes market purchases when doing so is economic, that is, when purchasing power saves the Company money as compared with producing energy by its own generating units. Mr. Hunt conceded that this was true at the hearing.[55] In reality, understatement of market purchases asks those savings and pushes up customer cost, just as understatement of off-system sales does.

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[50] Leonard Saul Goodman, *The Process of Ratemaking*, Public Utility Reports, Inc., 1998, p. 325.
[51] Exh. No. DN-1HCT, p. 9
[52] *WUTC v. PacifiCorp, d/b/a Pacific Power & Light Co.*, Docket UE-050684, Order 04 at ¶ 50 (April 17, 2006).
[53] *Id.* at ¶ 68.
[54] PSE Brief, ¶ 46.
[55] TR. 768:11-21 (confirming that if the rate year forecast were adjusted to include a higher level of market purchases, the baseline power charges to retail customer would be expected to be lower.) Table 6 is found at Exh. No. DEM-12CT, p. 47.

B. PSE Misconstrues Public Counsel's Trigger Proposal.

28. In response to Public Counsel's "trigger" proposal, PSE asserts that it is not appropriate to adjust just one component of the system power costs (gas cost).[56] This misconstrues the proposal. Public Counsel is not recommending that only gas prices be adjusted, but rather that a 15 percent reduction in gas prices from the level used to set the baseline rate be used as the basis for triggering a petition to adjust the company's baseline power rate.

V. REVENUE REQUIREMENT ISSUES

A. The Current Economy.

29. PSE misunderstands Public Counsel's testimony regarding the relevance of economic conditions as a request "to adopt 'austerity adjustments'"[57] of the specific type adopted by the New York Public Service Commission or the Hawaii Commission. As Mr. Dittmer explained at the hearing, however, this factor is a "third argument [in addition to efficiency/productivity and deflation offsets]....I think it is reasonable for the Commission to expect the utilities to work harder to trim costs also. Now the practical application of what I'm doing is I'm using it as an argument to curb the far reaching price change only adjustment that the company had offered in its case."[58] Chairman Goltz correctly observed that Public Counsel is suggesting that the Commission "use the economic situation as a lens through which to look at these other adjustments."[59] The mechanics are different from the other state decisions, but conceptually allied.[60]

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[56] PSE Brief, ¶ 44.
[57] PSE Brief, ¶ 10.
[58] TR. 616:6-14.
[59] TR. 618:12-16.
[60] Dittmer, TR. 618:11-19.

B. Conservation Phase-In.

30. Public Counsel's Opening Brief generally addresses the points made in PSE's brief on this issue. One point inviting response is the statement that "[w]hether or not loads are increasing is irrelevant; PSE would have had greater sales to cover increasing costs if conservation had not reduced load."[61] On the contrary, nothing is more relevant than the fact that overall loads are increasing, and that usage per electric customer remains flat, in spite of conservation efforts. PSE asks the Commission to employ tunnel vision and look at a single element of customer usage (conservation), while disregarding all other factors that are causing loads to increase. Nothing could be more inconsistent with the requirement of WAC 480-07-510(3)(e)(iii) that offsetting factors must be considered.[62]

31. PSE's Brief continues to argue the need for a mechanism to "remove disincentives to promote conservation."[63] The Brief is silent, however, with respect to PSE's incentive mechanism, or the financial benefits it provides to the Company. Although PSE has allowed the mechanism to expire, PSE is likely to receive an incentive payment of $4.3 million for 2009,[64] in addition to the $4 million incentive payment for 2008 mentioned in Public Counsel's Opening Brief. While PSE argues for some type of lost margin recovery, as the Northwest Energy Coalition points out, " a mechanism that permits lost margin recovery should not, in the process, erode the utility's incentive to control costs or to improve operational efficiency."[65] PSE's now-expired incentive mechanism included a "net shared incentive" component designed to

[61] PSE Brief, ¶ 74 (footnote omitted).
[62] *WUTC v. Avista Corp*, Docket Nos. UE-090135, UG-090135, Order 10, ¶¶ 45-47.
[63] PSE Brief, ¶ 72.
[64] PSE Energy Efficiency Services Program Results: January – December 2009, Compliance Filing, February 16, 2010, p. 5. The Commission may take official notice of this filing. WAC 480-07-495(2)(a)(i)
[65] Initial Brief of Northwest Energy Coalition, ¶ 21.

encourage the Company to keep conservation costs under control. The Conservation Phase-In has no such component.

32. In its Initial Brief, the Northwest Energy Coalition recommends that the Commission initiate "a rulemaking or other proceeding tailored just to disincentive issues....[that] could aid the Commission in establishing specific guidelines of general applicability that are designed and intended to reduce or eliminate disincentives to energy conservation."[66] The Commission has conducted multiple similar proceedings in the last several years, including a rulemaking on decoupling in which the Commission concluded that decoupling should be considered on a case-by-case basis reviewing specific company proposals, preferably in the rate case context. [67] Initiating a rulemaking as requested by NWEC would not be a productive use of Commission , Staff, or stakeholder resources. Companies that believe they face "disincentives" to engage in conservation can continue to propose remedial mechanisms for consideration in rate cases.

VI. CONCLUSION

33. For the foregoing reasons, Public Counsel respectfully requests that the Commission approve the Public Counsel recommendations in this docket.

DATED this 2nd day of March, 2010.

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[66] *Id.*, ¶ 25.

[67] The Commission reviewed its history of considering "disincentive" issues in the decoupling context in its Avista rate case order. *WUTC v. Avista Corp*, Docket Nos. UE-090135, UG-090135, Order 10, ¶¶ 240-245.